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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204001
Party	Plaintiff The Defiers MC of Pikeville
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Submission	Other Motions/Papers
Filer's Name	Christopher T. Smedley
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Date	09/18/2012
Attachments	Response to Motion for SumJud and Exhibits.pdf ( 12 pages )(1089738 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE DEFIERS MC OF PIKEVILLE	)	
	)	
Opposer	)	
	)	
v.	)	
	)	
THE DEFIERS MOTORCYCLE CLUB	)	Opposition No. 91204001
	)	Serial No. 85/272,160
Applicant	)	
	)	

**OPPOSER'S RESPONSE TO APPLICANT'S MOTION  
FOR SUMMARY JUDGMENT**

COMES NOW, the Opposer, and for its Response to Applicant's Motion for Summary Judgment, responds as follows. On August 21, 2012, Applicant filed a Motion for Summary Judgment requesting that the Trademark Trial and Appeal Board (the "Board") enter summary judgment in favor of Applicant on the grounds that the individuals who signed the Notice of Opposition on behalf of Opposer did not have sufficient interest in Opposer or Opposer's trademark asserted in the Opposition to have standing to file the Opposition.

Applicant's Motion for Summary Judgment alleges that the two (2) individuals who signed the electronic copy of the Notice of Opposition in the instant case, Ben Fleming and Jimmy Wright, did not have authority to sign on behalf of the Opposer, The Defiers MC of Pikeville. Mr. Fleming and Mr. Wright electronically signed the Notice of Opposition of February 22, 2012, opposing Applicant's trademark in Serial No. 85/272,160, as authorized representatives of the Opposer.

In the Motion for Summary Judgment, Applicant alleges that neither man was a member in good standing of the Opposer, a local motorcycle club and charitable organization,

and therefore neither had the authority or standing to sign on behalf of Opposer. In support of his position, Applicant submitted a self-serving affidavit in Applicant's own name stating that Mr. Fleming and Mr. Wright were not members of The Defiers MC of Pikeville.

In order to prevail, the movant in a Motion for Summary Judgment must show that there is no genuine dispute as to the material fact at issue, and are therefore entitled to the judgment requested as a matter of law. Fed. R. Civ. P. 56(a). The movant must show this through evidence and materials in the record, or by showing the materials cited do not establish a genuine dispute, or that the other party cannot show evidence to support the fact in dispute. Fed. R. Civ. P. 56(c)(1); see also, *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Although Opposer believes Applicant's self-serving Affidavit claiming Mr. Fleming and Mr. Wright were not members of Opposer at the time of filing the Notice of Opposition is insufficient to show that there is no genuine dispute as to the material fact of standing, Opposer can show through the enclosed evidence that Mr. Fleming and Mr. Wright did in fact have standing to file the Notice of Opposition on behalf of Opposer.

Although the Applicant states in his Affidavit that neither Mr. Fleming nor Mr. Wright were members of Opposer at the time they signed the electronic Notice of Opposition, both men were in fact members of Opposer in good standing. See, Exhibit A, Affidavit of Ben Fleming, para. 3; and Exhibit B, Affidavit of Jimmy Wright, para. 3. Further, at the time they signed the Notice of Opposition on behalf of Opposer, both Mr. Fleming and Mr. Wright had sufficient authority to bind Opposer. See, Exhibit A, Affidavit of Ben Fleming, para. 4; and Exhibit B, Affidavit of Jimmy Wright, para. 4.

However, Opposer presents additional evidence, beyond the personal Affidavits of Mr. Fleming and Mr. Wright, that demonstrates the two were members in good standing of the

Opposer at the time they signed the Notice of Opposition. Enclosed herewith is a statement from The Pikeville Chapter of the Defiers MC, signed by four (4) other members and notarized, which states that Ben Fleming is president of the chapter, Jimmy Wright is Vice President of the chapter, and both were members in good standing at the time they signed the Notice of Opposition. See, Exhibit C.

Further, attached to the statement from The Pikeville Chapter of the Defiers MC are copies of the dues and attendance record for both Mr. Fleming and Mr. Wright. These records indicate both men were members of the Opposer at all times during the year 2012, including the relevant period in which the Notice of Opposition was filed. See, Exhibit C. As a result, there can be no genuine dispute to the material fact that Mr. Fleming and Mr. Wright were both members in good standing of Opposer, and had full authority to bind the Opposer, at the time the Notice of Opposition was filed.

Opposer's enclosed materials demonstrate beyond a doubt that Mr. Fleming and Mr. Wright were members of Opposer, and had full authority to bind the Opposer in filing the Notice of Opposition. Therefore, Mr. Fleming and Mr. Wright had standing to file the Notice of Opposition. As a result of this evidence, Applicant failed to meet its burden to show that Opposer does not have any evidence to refute that there is a genuine dispute.

### **CONCLUSION**

WHEREFORE, as demonstrated by the evidence and materials provided herein, Mr. Fleming and Mr. Wright were both members in good standing of the Opposer, having full authority to file the Notice of Opposition on behalf of Opposer. As such, Applicant has failed to demonstrate that there is no genuine dispute as to the material facts related to Opposer's standing. Therefore, Applicant failed to meet the burden required to demonstrate summary

judgment is appropriate. The Opposer respectfully requests the Board deny Applicant's Motion for Summary Judgment.

Respectfully Submitted,

By: /s/ Christopher T. Smedley  
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Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 18<sup>th</sup> day of September, 2012, a true and correct copy of the foregoing Opposer's Response to Applicant's Motion for Summary Judgment was served by regular U.S. mail upon the following counsel for Opposer:

Matthew H. Swyers, Esq.  
344 Maple Avenue West, Suite 151  
Vienna, Virginia 22180

By: /s/ Christopher T. Smedley  
Christopher T. Smedley

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE DEFIERS MC OF PIKEVILLE,

Opposer

v.

THE DEFIERS MOTORCYCLE CLUB

Applicant

Opposition No. 91203930  
Serial No. 85/272,160

AFFIDAVIT OF BEN FLEMING

Comes now the Affiant:

1. I, Ben Fleming, being at least 18 years of age and of sound mind, state that I have personal knowledge of the events described herein.
2. I am currently a member in good standing of The Defiers Motorcyle Club of Pikeville, in Pikeville, Kentucky, and have been a member in good standing since June 1982.
3. On February 22, 2012, myself and Jimmy Wright, also a member of The Defiers Motorcycle Club of Pikeville, signed a Notice of Opposition that was filed with the Trademark Trial and Appeal Board against Application Serial No. 85/272,160.
4. On February 22, 2012, I was a member in good standing of The Defiers Motorcyle Club of Pikeville, and along with Jimmy Wright, had full authority to sign the Notice of Opposition on behalf of The Defiers Motorcycle Club of Pikeville.

Further the Affiant Sayeth Naught.

Ben Fleming  
Ben Fleming

Date: 9-17-2012

The undersigned, Mona M. Coy, a Notary Public in and for this County and State, hereby certifies that the attached document was signed by Ben

Exhibit A

Fleming, who acknowledged that they did sign the foregoing instrument and that the same are of their free act and deed.

In testimony whereof, I have hereunto set my hand and official seal this 17 day of September, 2012.

Marena McCoy  
Notary Public, State at Large

My Commission Expires: 3-20-14



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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THE DEFIERS MC OF PIKEVILLE,

Opposer

v.

THE DEFIERS MOTORCYCLE CLUB

Applicant

Opposition No. 91204001  
Serial No. 85/272,160

AFFIDAVIT OF JIMMY WRIGHT

Comes now the Affiant:

1. I, Jimmy Wright, being at least 18 years of age and of sound mind, state that I have personal knowledge of the events described herein.
2. I am currently a member in good standing of The Defiers Motorcyle Club of Pikeville, in Pikeville, Kentucky, and have been a member in good standing since 12/19/04.
3. On February 22, 2012, myself and Ben Fleming, also a member of The Defiers Motorcycle Club of Pikeville, signed a Notice of Opposition that was filed with the Trademark Trial and Appeal Board against Application Serial No. 85/272,160.
4. On February 22, 2012, I was a member in good standing of The Defiers Motorcyle Club of Pikeville, and along with Ben Fleming, had full authority to sign the Notice of Opposition on behalf of The Defiers Motorcycle Club of Pikeville.

Exhibit B

Further the Affiant Sayeth Naught.

Jimmy Wright  
Jimmy Wright

Date: 9/17/2012

The undersigned, Maena McCoy, a Notary Public in and for this County and State, hereby certifies that the attached document was signed by Jimmy Wright, who acknowledged that they did sign the foregoing instrument and that the same are of their free act and deed.

In testimony whereof, I have hereunto set my hand and official seal this 17 day of September, 2012.

Maena McCoy  
Notary Public, State at Large

My Commission Expires: 3-20-14

We The Pikeville Chapter of Defiers MC  
recognize that Ben Fleming (President )  
and Jimmy Wright ( Vice President ) were  
active members in good standing in Feb.  
2012 and were acting under the authority of  
the Pikeville Chapter as representatives of  
the Pikeville Defiers MC when the  
opposition of trademark was filed in Feb.  
2012.

9/13/12

Stanly ~~Wright~~, G. (Road Captain) 9-13-12  
Mike Hicks - Secretary - 9-13-12  
Ronnie Moore Sgt @ Arms 9-13-12  
Am ~~Nelson~~ Treasurer 9-13-2012

9-14-12

Marena McCoy  
NOTARY

My commission expires 3-20-14

Exhibit C

Name

Bert Fleming

Year →	2010	2011			2012					
Month ↓	Meetings	Dues	Meetings	Dues	Meetings	Dues	Meetings	Dues	Meetings	Dues
January	✓	✓	✓	✓	✓	✓				
February	✓	✓	✓	✓	✓	✓				
March	✓	✓	✓	✓	✓	✓				
April	✓	✓	✓	✓	✓	✓				
May	✓	✓	✓	✓	✓	✓				
June	✓	✓	✓	✓	✓	✓				
July	✓	✓	✓	✓	✓	✓				
August	✓	✓	✓	✓	✓	✓				
September	✓	✓	✓	✓	✓	✓				
October	✓	✓	✓	✓	✓	✓				
November	✓	✓	✓	✓	✓	✓				
December	✓	✓	✓	✓	✓	✓				

